

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CARLOS VIGIL,

Petitioner,

v.

ATTORNEY GENERAL, et al.,

Respondents.

Case No. 3:13-cv-00545-MMD-WGC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner.

On October 4, 2013, this Court issued an order denying petitioner's *in forma pauperis* application and requiring plaintiff to pay the filing fee for this action within thirty (30) days. (Dkt. no. 3.) The thirty-day period has now expired, and petitioner has not paid the filing fee or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case." *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g. *Pagtalunan v. Galaza*, 291 P.3d 639, 643 (9<sup>th</sup> Cir. 2002) (dismissal of habeas corpus petition with prejudice for failure to prosecute action and failure to comply with a court order); *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir. 1995) (dismissal for noncompliance

1 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal  
2 for failure to comply with an order requiring amendment of complaint); *Carey v. King*,  
3 856 F.2d 1439, 1440-41 (9<sup>th</sup> Cir. 1988) (dismissal for failure to comply with local rule  
4 requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal*  
5 *Service*, 833 F.2d 128, 130 (9<sup>th</sup> Cir. 1987) (dismissal for failure to comply with court  
6 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9<sup>th</sup> Cir. 1986) (dismissal for failure  
7 to lack of prosecution and failure to comply with local rules).

8 In determining whether to dismiss an action for lack of prosecution, failure to  
9 obey a court order, or failure to comply with local rules, the court must consider several  
10 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need  
11 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
12 favoring disposition of cases on their merits; and (5) the availability of less drastic  
13 alternatives. *Pagtalunan*, 291 F.3d at 642; *Thompson*, 782 F.2d at 831; *Henderson*,  
14 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46  
15 F.3d at 53.

16 This Court finds that the first two factors, the public's interest in expeditiously  
17 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
18 dismissal. The third factor, risk of prejudice to respondents, also weighs in favor of  
19 dismissal, since a presumption of injury arises from the occurrence of unreasonable  
20 delay in filing a pleading ordered by the court or prosecuting an action. See *Anderson*  
21 *v. Air West*, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor – public policy favoring  
22 disposition of cases on their merits – is greatly outweighed by the factors in favor of  
23 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
24 the court's order will result in dismissal satisfies the “consideration of alternatives”  
25 requirement. *Pagtalunan*, 291 F.3d at 643; *Ferdik v. Bonzelet*, 963 F.2d at 1262;  
26 *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. This Court's order requiring  
27 petitioner to pay the filing fee within thirty (30) days expressly stated: “Petitioner shall  
28 have thirty (30) days from the date this order is entered in which to have the \$5.00 filing

1 fee sent to the Clerk. Failure to do so may result in the dismissal of this action.” (Dkt.  
2 no. 3, at p. 1.) Thus, petitioner had adequate warning that dismissal would result from  
3 noncompliance with the Court’s order.

4 It is therefore ordered that this action is dismissed with prejudice based on  
5 petitioner’s failure to pay the filing fee in compliance with this Court’s order of October 4,  
6 2013.

7 It is further ordered that the Clerk of Court shall enter judgment accordingly.

8 DATED THIS 13<sup>th</sup> day of December 2013.

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11 MIRANDA M. DU  
12 UNITED STATES DISTRICT JUDGE  
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